

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re Application of:           Cechan (nmi) Tian, et al.  
Serial No.:                    10/695,711  
Filing Date:                 October 29, 2003  
Group Art No.:               2613  
Confirmation No.:            5574  
Examiner:                    Marina Y. Taranina  
Title:                         **Method and System for Increasing Network Capacity in an  
Optical Network**

Commissioner for Patents  
P.O. Box 1450  
Alexandria, Virginia 22313-1450

Dear Sir:

ELECTRONICALLY FILED WITH THE USPTO ON February 15, 2008
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**PRE-APPEAL BRIEF REQUEST FOR REVIEW**

The following Pre-Appeal Brief Request for Review ("Request") is filed in accordance with the provisions set forth in the Official Gazette Notice of July 12, 2005. Pursuant to the OG Notice, this Request is being filed concurrently with a Notice of Appeal. Applicants respectfully request reconsideration of the Application in light of the remarks set forth below.

### **REMARKS**

In the final Office Action transmitted November 19, 2007 (the "Office Action") Claims 1-46 were rejected. Applicants contend that the rejections of Claims 35-46 contain clear legal and factual deficiencies, as described below. Applicants do not seek review in this Request of the rejections of Claims 1-34. Applicants request a finding that the rejections of Claims 35-46 are improper and that these claims are allowable.

The Office Action rejects Claims 35-46 under 35 U.S.C. 102(e) as being anticipated by U.S. Publication No. 2003/0025961 to Way ("*Way*"). Applicants respectfully traverse these rejections.

Claim 35 recites a plurality of hub nodes operable to selectively pass or terminate a plurality of individual sub-bands of optical traffic, a plurality of sub-band nodes each operable to terminate a respective sub-band of the optical traffic, and wherein the plurality of hub nodes form a plurality of photonic domains each operable to communicate different traffic streams in the same sub-bands without interference. Claim 41 recites similar elements. The Office Action suggests that *Way* discloses each of these elements. *See* Office Action, page 4. The Office Action generally cites to paragraph [0071] of *Way* as disclosing the claim element wherein the plurality of hub nodes form a plurality of photonic domains each operable to communicate different traffic streams in the same sub-bands without interference. This paragraph references Figure 13 of *Way* illustrating a node that merely couples three different rings in order to facilitate sharing of wavelengths on the three rings. There is no disclosure of a plurality of hub nodes on the same ring forming a plurality of photonic domains each operable to communicate different traffic streams in the same sub-bands without interference. In responding to Applicants previous arguments regarding these rejections, the Office Action states that:

[T]he examiner has considered each ring (e.g. the left-hand, the right-hand, and the bottom ring) as a separate optical domain with the plurality of elements that connect them interpreted as hub nodes. Furthermore, while the applicant contends that the plurality of nodes are on the same ring, the claim language fails to reflect this limitation.

Office Action, page 6.

Applicants respectfully disagree. Claim 35 recites an optical ring with a plurality of nodes coupled to the ring where each node is operable to passively add and drop traffic to and

from the ring. The plurality of nodes comprise hub nodes and sub-band nodes, and the hub nodes form a plurality of photonic domains each operable to communicate different traffic streams in the same sub-bands without interference. As indicated above, the Office Action generally refers to paragraph [0071] and Figure 13 of *Way* and contends that each ring is a separate optical domain with a vague reference to "the plurality of elements that connect them" as hub nodes. *See* Office Action, page 6. However, the Office Action fails to identify which components are the claimed hub nodes and which components are the claimed sub-band nodes, particularly in light of the claim elements stating that each of such claimed nodes are operable to passively add and drop traffic to and from the same ring. Moreover, there is no disclosure of a plurality of hub nodes, each operable to passively add and drop traffic from the ring, forming a plurality of photonic domains. The Office Action fails to demonstrate how the mere disclosure in Figure 13 of *Way* of three rings with splitters, couplers, and 1x1 switches satisfies the necessary disclosure required to support the rejections.

Therefore, for at least these reasons, Applicants respectfully submit that Claims 35 and 41 are patentable over the cited art used in the rejections and request that the rejections of these claims be withdrawn.

Claims 36-40 each depends from Claim 35, and Claims 42-46 each depends from Claim 41. Thus, for at least the reasons discussed above with respect to Claims 35 and 41, Applicants respectfully request that the rejections of Claims 36-40 and 42-46 be withdrawn.

**CONCLUSION**

As the rejections of Claims 35-46 contain clear deficiencies, Applicants respectfully request a finding of allowance of Claims 35-46. If the PTO deems that an interview is appropriate, Applicants would appreciate the opportunity for such an interview.

Although no fees are believed to be currently due, the Commissioner is hereby authorized to charge any fees or credit any overpayments to Deposit Account No. 02-0384 of BAKER BOTTS L.L.P.

Respectfully submitted,

BAKER BOTTS L.L.P.  
Attorneys for Applicants

A handwritten signature in black ink, appearing to read 'Chad C. Walters', with a long horizontal flourish extending to the right.

Chad C. Walters  
Reg. No. 48,022

Date: February 15, 2008

**Correspondence Address:**

Customer Number: **05073**